

THE RELATION BETWEENE

THE LORD OF A MANNOR.
AND THE COPPY-HOLDER
His TENANT..

4952

Delivered in the Learned Readings of the late
Excellent and Famous Lawyer, CHAR. CAL-
THROP of the Honorable Society of
Lincolnes-Inne Esq;.

Whereby it doth appeare for what causes a Coppy-
holder may forfeite his Coppy-hold Estate,
and for what not; and likewise
what Lord can grant a
Coppy, and to whom.

Published for the good of the Lords of Mannors,
and their Tenants..

*Non magis pro manibus quam pro servandis legibus
liber: Civis pugnare debent, siquidem sine manibus
Respublica potest consistere: sive. Legibus non potest.*

L O N D O N.

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his shop neere Furnivals Inne gate in
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THE
REDACTION



COPPY- HOLDS.

The first Lecture.



THE great injuries which are offered, and small remedies which are used in cases of Coppy-holds, which as it seemeth, doe grow by the obscure knowledge what Law & Custome judgeth in these matters of Coppy-hold : moveth mee to shew some part of my Travailes in these poynts, not thereby to animate Coppy-hold Tenants which would by too much advancing their Tenure, pretend only to be Tenants by Custome, and not Tenants at *Will*, nor to encourage any *Coppy-hold* Lord, which could by too much abasing these *Tenures*, pretend to have such *Coppy-holders*

Holders, onely Tenants at Will, and not regard their customes, but to proove unto you, that as their Title and name sheweth they are *Tenants at will*, and *Tenants by Custome* in their Land, and they consist both of their Lords *Will* and *Custome* of the *Mannour* in their degrees. And that this *Will* and *Custome* be contained within the Limits of Law and reason, according to such rules as shall be hereafter declared.

First I will shew what a Coppy-hold is, then whereof it doth consist, and what estimation the same is of, by the Antiquity of time, and by the Lawes and Statutes of this Realme.

Master *Littleton* in his first booke of *Tenures*, defineth a Tenant by Coppy of Court Role; and to be where a man is seised of a *Mannour*, in which is a *Custome* that hath been used time out of minde, that certaine Tenants of the same *Mannour* have used, to have certaine Lands and Tenements to hold to them, and their heires, in Fee Simple, Fee-Taile, or for Life, at the will of the Lord after the *Custome* of the *Mannour*: And that they have no other evidence but the Roles of the Court, by which definition, and by certaine other observations of the Law it may be gathered, that a Coppy-hold doth consist of these sixe principall grounds, or Circumstances.

(viz.)

First

First, there must be a *Mannour*, for the maintenance of *Coppy-hold*.

Secondly, a custome for the allowing of the same.

Thirdly, there must be a Court holden for the prooffe of the *Coppy-holders*.

Fourthly, there must be a Lord to give the *Coppy-hold*.

Fifthly, there must be a *Tenant* of Capacity to take the *Tenement*.

Lastly, the thing to bee granted which must bee such as is grantable, and may bee held of the Lord according to the *Tenure*.

But first before I speake of these Circumstances, I will briefly declare unto you the Dignity and Estimation of *Coppy-holders*, by the Antiquity, and allowance of time, and by the Lawes and Statutes of this Realme.

It appeareth by a certaine booke intituled *De priscais anglor: legibus* : Translated out of *Saxon* Tongue by Master *Lambert* of *Lincolns Inne* ; that *Coppy-holds* were long before the Conquest, and then called by the name of (*Bookeland*) as you may see in the beginning of the Booke, in the Treatise *De rerum & Verborum explicatione* ; and by Master *BRAC*TON an Ancient Writer of the Lawes of *ENGLAND*, who in his Booke VVriteth divers presidents

and Records of King *Henry* 3. of allowance, Copi-holders or Customary Tenants that do their due services, the Lords might not expell them; according to the opinion of the latter Judges, in the time of *Edward* the 4. and *Edward* the third: And it appeareth by Master *Fitz-Herberts Abridgements*, they were preferred by a speciall writ for that purpose, and the Lord thereby compelled to do right. And in the time of *Henry* the fourth, Tenants by the Virge, which are the same in Nature, as Copy-holders be, were allowed by the name of *Sokemaines* in *Frankenure*; as in the time of *Henry* 7. were allowed, and of the King, for defence of their estates. So that in every Kings time Copy-holders have had their allowances according to their natures, unto this time present, wherein our Justices are of opinion, as the said grave Sages have beene in times past. Now I will further proceede in some perticuler use of these Tenures, according to the Lawes and Statutes of this Realme: And because I finde none that doth so much deface the estimation of Copy-holders, as Master *Fitz-Herbert* doth in his Writ *Dere Uo Clauso*. I will begin with his words and judgement in the same, and proceed to other Authorities.

Master *Fitz-Herbert*, saith that this Terme Coppi-holders is but a new Terme, newly found

found out, & that in old time they were called Tenants in Villenage, or base Tenure; and this saith he, doth appeare in the old Tenures, for no Coppy-holders are there spoken of, although there were at that time such Tenants. But then saith, they were called Tennants in Villenage and saith, as appeareth 44. *Henry 4.* If a false judgement be given against them, in the Lords Court, they shall have no remedy, but sue to their Lord by petition, because to hold by Coppy of Court Role, which is as hee saith base Tenure, is to hold in Villenage, which said opinion of *Fitz-Herbert*, have beene by divers wrested, to make no diuersity betweene Tenure in Villenage, and Tenure, by Coppy of Court Role or base Tenure, wherein whatsoever interpretation may be made, Master *Fitz Herberts* meaning is very plaine, and the Booke of the old Tenures, is to be farre otherwise understood: as also I suppose, all other Authorities in our Law doe make and appoint difference betweene the Tenures. And first touching the Booke of the old Tenures it is plaine, that the Booke maketh a plaine distinction betweene Tenure in Villenage, and Tenure in Fee Base, which is understood this Tenure by Coppy-hold, and calleth it a Fee although a base Fee, and maketh diuerse distinctions betweene them, and sayth, that the *Tenants*

in *Villanage* must doe all such things as their Lord will command them. But otherwise, it is of the *Tenants* in Base Fee. And this it seemeth the sayd Booke of olde *Tenures* to be by Mr. *Fitzherbert* mis-recited, which I am the bolder to affirme, saving the due reverence to his Learning: because one Mr. *Thornion* of *Lincolns* Inne, a man very learned in his late Reading there upon the *Statute of Forger facts*: Speaking of *Forging Court Roles*, did playnly affirme the Booke of the olde *Tenures* to be mistaken by Mr. *Fitzherbert* in this poynt. And besides, for the further credite of *Coppy-ho'ds*, we ought to consider the great Authority of Mr. *Littleton*, who amongst the rest of his *Tenures*, doth make a divided Chapter thereof, differing from his *Tenement* in *Villanage*, shewing there the Suites and Plaints of *Coppy-holders*, saying that they haue an Estate of Inheritance according to the Custome: And delivereth his owne opinion, that if a *Coppy-holder* doing his Services bee compelled by the Lord, he shall haue an Action of Transgression. And sayth, that *Danby* and *Brian* 21. Ed. 4. were of the same Minde, according to which is *Bracton*, and the sayd Presidents of *Hen. 3.* and the Writ vsed in *Tempore, R. 2.* besides many other reasons at the Common-Law, &c. proving that by use and circumstance things may alter and change

change their originall nature.

As for example, the Service of *Socage Tenure* was at the beginning, (as Mr. *Littleton* sayth) to Till the Lords Land, &c. And yet now by consent of the Lord, and by continuance of time are turned into money, and other Services in lieu thereof. Even so may be sayd of *Coppy-holds*, as long as the *Tenants* themselves be free, though their *Tenure* were at beginning never so bound and base: yet by course of time, they may gayne more liberty and freedome, and grow to more estimation and account. An other reason and Rule there is at the Common-Law, to this intent, that some things there were which in the beginning were but *voluntary*, and yet in the end by continuance became *Compulsary*, as appeareth 27 *Aff. praescript. Bract.* That a man that did at the first of his owne meere benevolence repayre a high way or a Bridge by often using, was afterwards compelled *volens nolens*. Even so it may be sayd of the *Coppy-holders*, who at the first held but at the free will of the Lord; yet now by usage and continuall granting time out of minde, they haue gotten an estate after the Custome, that doing their Services, and behaving themselves well, they cannot by Law or Reason be put from them. Thus much for the allowance of *Coppy-holders* by the Common-Law, now let us consider

Order the Reputation of them by the Statutes and Parliament Law.

Statutes and
Parliament
Lawes.

It appeareth by the Statute of 1. *Rich.* 3. 4. & 19. *Hen.* 7. 23. That a *Coppy-holder* that may dispend twenty sixe shillings eight pence by the yeare shall be Empanelled on a Jury, as hee that may dispend twenty shillings by the yeare of Free Lands. And by the Statute of the 2. *Ed.* 6. *cap.* 8. the Interest of *Coppy-holders* are Reserved, being found by Office after the Death of the Kings Tenants, as well as other Estates at the Common-Law, and so doth the Statute of Monasteries. 31. *Hen.* 8. *cap.* 13. & 1. *Edw.* 6. *cap.* 14. preserve *Coppy-holds* from dissolving. And it will seeme that *Coppy-holders* are for the Common-wealth, and therefore to bee maintayned, for that some haue beene erected and established by Parliament, which were not *de visibie* by *Coppy* before, as appeareth by the Statutes 32 *Hen.* 8. 2. 2. *Ed.* 32.

What shall be sayd, a Mannour and a Mannour as will maytaine a *Coppy-hold*. A Mannour consisteth in two parts (*viz.*) Demeasnes and Services, and neyther of these two parts hath the name of a Mannour without the other: for as a Messuage or Lands cannot be called Demeasnes without Tenements thereunto belonging, to pay Rents and do Services, but doth still beare the name of Messuage

OR

or Lands : So on the other part, though a Man have Tenements to pay him Rents, and doe him Services, and no Messuage or Lands whereupon to keepe his Court, and to receiue his Rents and Services, this cannot be called a Mannour, but onely a Signiory in grosse.

Fitz. na. breu. f. 3. & 8.

Demeanes are so called, for that the Lord himselfe occupieth and manureth them *In son maine Demeasne*. But all Lands that have been in the Lords owne hands, bee not called *Demeanes*, for all Free-holds and Coppy-holds were in his owne hands at the beginning. But *Demeanes* is that which is now, and time out of Minde have beene in the Lords hands, or occupation of his Bayliffe or Servants : And that also which auncient Coppy-hold may be to some purpose ealled *Demeasnes*, because in every Surrender in *Manus Domini*, and every grant *extra manus Domini*, the Lord hath a meddling with it, and may thereupon keepe his Court, and for the most part cut downe Timber, and such like : And that it is also called *Demeasnes*, which now is in the Lords hands by any new Escheate or Forfeiture. And also the Lands which are in the hands of the Coppy-holders, is such a *Demeasne* as with other Services will make a Mannour,

C

though

though the Lord hath none other demeanes there in his owne hands, nor in the hands of his Bayliffe, or servants Services, as with a Demeasne shal make a Mannour to maintaine: Coppy-holds is where a man holdeth Lands or Tenements freely to suite to the Court of the Lord of the Mannour within the sayd Fee: But yet every kind of Service will not make a Mannour, for Services are of two kinds, *viz.* That is by Tenure and by covenant; Service by Tenure is also of two sorts, as if a man at this day giveth his Land in taylor, or leaseth it for Life or Yeares, saving the Reversion: here is a Service of Fealty incident to this Tenure, betweene the *Doner* or the *Lessor*, and the *Donee* or the *Lessee*. And yet though this be a Service by Tenure, yet is it no such Service as will make a Mannour. For if a man at this Day be seised of twenty Acres of Land, and *Enfeoffeth* nineteene severall persons of nineteene of these Acres, saving the twentieth to himselfe, and reserveth of every of his *Feoffees* suite of the Court and other Services to be done to this Court, to be held on the twentieth Acre, though the *Feoffments* be by Deed indented, or in taylor or of Lives, yet all is voyde, and avayleth not to make a Mannour. But it maketh onely a Tenuringrosse, for a Tenure may by divers

vers meanes be created at this Day ; but a Mannour by no way, by a Common person.
Plow. Com. 2.693.

A Mannour must be by Prescription, and the Services by Continuance, time out of minde.

But although a man at this Day cannot make a Mannour, yet hee may in some sort enlarge a Mannour by adding more Services unto it. *9. Ass.* A man seised of a Mannour did give parcell of the same to hold of him by Suite to his Mill within the same Mannour, for this Service the Lord may distrayne, and it is their held to be accounted parcell of the Mannour.

In like manner, a man may by reserving upon a gift, Intayle, or Lease for Life: Services in grosse, increase the Services of an ancient Mannour. *Signior grant le Demeasnes & Services del son Mannour de Norkelsey &c. extend en auter Towne per le melior opinion des Justices de Common Banck le grantees, &c.* keepe a Court there, and so a Mannour to be created at this Day.

In the case of Mounson on Aston.
By the Report of Denham of Lincoln's Inne

What shall be sayd, a Mannour or a Tenure in his proper nature or Common-Law, and
 C 2 what

what in respect of Usage or Custome to maintaine Coppy-holders.

It is to bee noted, that although a *Manour* of his proper ought to consist of demeanes and services, yet in some cases that may bee a Manour, and maintaine Coppy-holders, and a Court Baron, by usage and custome, which otherwise by Common Law is no Manour, nor cannot so be called, &c.

A man seized of a Manour, whereunto bee divers free Tenants, divers Coppy-holders, and divers speciall Customary Tenants, and the Customary Tenants, do hold to give attendance on the Free holders at the Lords Court. All the Free Tenants dye saving one, the Lord doth bargain and sell the Manour to an Estranger. This is now in respect of the Free Tenements, a Tenure, and no Manour, in respect of the Coppy-holders, both a *Manour*, and Tenure, and in respect of the Customary Tenements, neither *Manour*, nor Tenure.

If divers do hold Lands, to dine with the Lord every Sunday in the yeare; this maketh neither good Tenure, nor *Manour*.

But

But if they hold to wait on the Lord every Sunday at dinner, and to dine with him; this maketh a good service, but no good *Tenure*.

If divers doe hold Lands by *Coppy* of the *Mannour* of D. and so have done time out of minde, and by the like time there hath bene no Free holders to the said *Mannour*, Although this be no *Mannour* in his proper nature, yet by usage it is a good *Mannour* to maintaine *Coppy-holds*.

A man seised of a *Mannour*, which time out of minde hath bene called by the name of the *Mannour* of S. and doth demise the same by the name of the *Mannour* of S. this is good.

If a man seised of a *Mannour*, whereto be six Free holders, and six Villaines Regardants: The six Free holders dye having Issue six daughters, the Villaines enterrary with them, yet the same is a *Mannour*, and the villaines thereto regardant.

If a man seised of a *Mannour*, whereto hee hath Leet, and wrecke of the sea by prescription, all the *Tenancies* Escheate, yet the Leete and the wrecke still remaine, and it is a *Mannour* to that purpose.

If divers doe hold Lands by prescription to finde the Lords mans meat, and hounds meat, when hee commeth to hunt the Fox in the said Lands; this maketh a good Tenure, but no good *Mannour*. If divers do hold Lands to doe suit and service at the Lords Court, This is most properly such service as maketh a *Mannour*: but if it be to doe suit and service at the Lords Court, when it pleaseth themselves, this is neither *Mannour* nor *Tenure*. If divers doe hold Lands to repaire a High way within a mile compasse, without the bounds of the Lord of the *Mannour*, this makes a good *Tenure*, but no *Mannour*. But to repayre or mend the wayes within the Precinct of the *Mannour*, is good to enlarge the *Mannour*.

If divers doe hold Lands to pray for the prosperous Estate of the Lord and his Heires, this maketh a *Tenure*, but no good *Mannour*.

If divers doe hold Lands of the Lord to wayte upon him at twenty dayes warning, twenty miles distant from the *Mannour*, this maketh a good Service, but no good *Tenure*. But if it be to wayte upon the Lord within the sayd *Mannour*, by certayne space, this

this maketh both a good *Tenure*, and a good
Mannour.

If divers holde Lands to beate or kill the
Lords Tenants that shall doe Trespasse on the
Lords *Demeasnes*, this is neyther good *Tenure*
nor good *Mannour*. But if it be to beate and
kill the Kings enemies, that shall doe so,
this maketh both a good *Tenure*, and a good
Mannour.

If Divers hold Lands by Prescription to
do Service to the Lord; to his Court of the
sayd *Mannour*, twenty miles distant at a place
certaine. This is both a good *Tenure* and a
good *Mannour*. But if it be to do Service to
his Court at another *Mannour*, this without
Prescription, cannot be severance from the
first *Mannour*.

If Divers doe hold to come to the Lords
Court, and there to doe nothing, this ma-
keth neither good *Tenure* nor good *Mannour*.
But to come to the Court, though not to
be of the Homage; yet to offer *Amercements*,
or make *Certificates*, or any other Service to
the Lord, this maketh a good *Tenure* and a
Mannour.

If any do hold Lands to do Divine Service
before

before the Lord and his Tenants in the Court-houſe, before the beginning of every Court, this maketh both a good *Tenure* and a good *Mannor*. *What ſhall be ſayd, a good Cuſtome to be able to maintaine Coppy-holds.*

A Cuſtome to make a Coppy-hold, muſt be of neceſſity in the ſame *Mannor*, where the ſayd Coppy-holds are ſo granted, *viz.* That the ſame Lands are, and time out of minde haue beene onely Demiſed and Demiſable by Coppy of Court Role: for otherwiſe the Lord cannot grant it by Coppy, becauſe hee cannot beginne a Cuſtome at this Day. But if it haue beene by like time granted by Coppy, though ſithence it came to the Lords hands; yet if the Lord never *Demiſe* the ſame by *Free Deede* nor otherwiſe, but by Coppy, then he may well grant agayne the ſame by *Coppy*, for it is neyther the perſon of the Lord, nor the occupation of the Land, that eyther maketh or marreth the *Coppy-hold*. But onely the uſage and manner of *Demiſing* the ſame, for the preſcription of a *Coppy-holder* conſiſteth neither in the Land, nor in the Occupier, but onely in the Uſage of the *Demiſing*.

The

THE DIVISION OF CUSTOMES.

viz. $\left\{ \begin{array}{l} \text{Customes.} \\ \text{Prescriptions.} \\ \text{Vfage, and} \\ \text{Limitation.} \end{array} \right. \left. \begin{array}{l} \} \\ \} \\ \} \\ \} \end{array} \right.$

THESE four though they be in some con- The division
founded together, and indeede are of of Customes.
great Affinity, yet there be divers differences
in their severall natures betweene them.

Custom is where by continuance of time,
a Right is obtayned concerning divers per-
sons in common.

Prescription is where by continuance of
time one particular person obtayneth Right
against an other.

Vfage is by continuance of time the effici-
ent cause of them both.

D

Limitation

Limitation is where a right may be obtained, by reason of a *non* claime, by the space of a certaine number of yeares, differing in the Account of time, from custome and prescription.

But what measure of time shall make a Custome, divers have differed in opinion; some judging the same to bee according to the Computation of yeares, from the time of K. Ed. 1. untill the Statute of M. 1. which appointeth the limitation in a writ of right: The account of which time unto the said Statute, from the said K. time is 76. yeares, others have thought a hundred years maketh a prescription, because in old time an hundred yeares was accounted a Fee simple.

But the true measure thereof according to Master *Littletons* Rule, is where a Custome, or Usage, or other things have beene used, so long as mans memory cannot remember the contrary. That is, when such matter is pleaded, that no man then in life, hath not heard any thing, nor know any prooffe to the contrary.

And by this it appeareth that *Customes*, and prescriptions, resteth onely in the memory of

of man, & limitation consisteth onely of a certaine time, which hath a certain beginning and of certaine ending, and is not directed by mans memory, wherein is ment limitation of time, and not limitation of estates.

If Lands have been demised by Coppy by the space of 60. yeares, and yet there be some alive, that remembreth the same occupied by Indenture, this is not a good Coppy-hold.

And if Lands have beene demised by Coppy but 40 yeares, and there is none alive that can remember the same to bee otherwise demised: This is a good Coppy-hold, for the number of yeares makes not the matter, but the memory of man. And it is not 60. 80. or 100 yeares that maketh a Coppyhold or a custome, though it makes a limitation. But such certaine number of yeares makes onely a likely-hood, or presumption of a prescription; that is, that it commonly happeneth not that any mans memory alive, can remember alone such a number of yeares. But if any chance to be alive, that remembreth the contrary, then such prescription must give place to such prooffe.

Custome hath certaine speciall vertues in

it selfe, which for the more estimation thereof, I will shortly shew according to certaine precepts and principals allowed by al Lawes, both by the Law of God, the Law of Nature, and the Law of Nations, and by the private Law of every Countrey: as by the Law of GOD it is said: *Si quis videtur consentiosus esse nos eiusmodi Consuetudine non habemus, nec ecclesia Dei*, which proveth that the Scripture, and the Church of God do attribute some what to good customes, though not to evill: And by the Law of Nature, *Consuetudo est altera natura*. And by the Law of Nations, *Consuetudo est optima legum interpret*. And by the Lawes of this Realme, Princes at their Coronation are sworne, as well to keepe the custome of this Land, as the Lawes of this Land, which Law doth attribute so much to custome, that sometimes it is admitted to derogate from the Custome Law, for *Consuetudo bona de clausa usitata et approbata, privat Communem Legem*.

Where



WHEREOF CVSTOME

doth Consist.

Custome although it doth chiefly consist of continuance of time and usage, yet it doth further require seven other necessary properties, accident for the maintenance of a good Custome: Which are these.

First, it must be reasonable, as it appeareth
2. *Ed.* 4. 24. 1

Secondly, it must be certaine, as appeareth 2
3. *Ed.* 3. 13. *Ed.* 3. 4.
Dum suit infra statem. 3. 14. *Ed.* 3. 4. 14. *H.* 4

Thirdly, it must bee according to Common right. 42. *Ed.* 3. 4. 3

Fourthly, it must bee on good consideration. 5. *Hen.* 7. 9. 42. *Ed.* 3. 4

Fifthly, it must bee compulsary: 42. *Ed.* 3. 5
Avow 66.

D 3

Sixtly,

Sixtly, it must be without prejudice to the King. 3. Hen. 6. *Customs Fitts Hen. 2. 22. Ed. 3. Prescription. 40.*

Seventhly, it must bee to his profit that claimeth the same. 31. Ed. 3. *Prescription 40. et 28.*

Usage is the efficient cause, both of Custom and Prescription; for without usage, there can bee neither *Custom* or Prescription, for even as the minde is to man, so is usage to *Custom*. And as you see there bee divers varietyes of mindes in men, so are there many varieties of *Customs* as you see varieties of Countries, and yet all men perfect, and all *Customs* perfect: some say that have their mindes affected according to the Constitution of their bodies: And, so have Countries their *Customs*, according to the Constitution of the place; as in *Kent*, and in *North Wales*, because those Countries have beene most subject to forraigne invasions, that every man there, may bee of power for resistance. The inheritance for the most part descend in gavell kind (*viz.*) to every brother alike, and in other middle parts of the Realme for whom government. *Least equality is best.*

The

The inheritance wholly descendeth to the eldest brother: And in *Borough* English which is in divers *Boroughs*, because their substance commonly is Lands, and in such Townes, Lands may bee the better preserved then goods, therefore their youngest sonnes shal onely have their Lands, and as it is in those great parts of the Realme, so it is in divers private parts and Mannours, and divers private and special customes. As some Mannours have Coppy-hold of inheritance, some for life, or liues: in some Manour the Copy-holders surrender in one manner, and in some in an other sort: In some the Fine is Arbitrable: And in some Certaine, *et sic in similibus.*

The usage of every Custome doth not rest to be yearely, daily, or continually used, but as the equality, and the nature of the thing whereof the Custome is, doth require, as Custome *Harryots* when they fall, of Shafts and Foldage, in their season of Common Estovers in their time, and for Coppy-holders, whose Fines are certaine, yet at one time to pay a greater Fine then at an other, and all these are good Customes, though they cannot bee used at all times, for Customes may bee sometimes used, sometimes
not.

not used, sometimes altered, and sometimes not, and therefore in *Custom* you may see there is (*user*, *non user*) Abuser and interuser.

User is, when according to time and occasion a *Custom* is used.

Non user is when for want of time and occasion, through negligence, or forgetfulness a *Custom* is not used.

Abuser is that, which user doth nourish, a *Custom* and non abuser tolerate a *Custom*, so doth abuser destroy a *Custom*, and yet in some cases, a *Custom* may bee sometimes used in one sort, and sometimes in another. And yet a good *Custom*, if there bee good considerations of the exchanging thereof all times, and this I call enteruser.

If there be a *Coppy-hold*, of an Ancient demeasne, and this Land is forfeited to the Lord by waste, and thereupon a seisure awarded thereof, and yet the Lord doth suffer the Tennant still to occupy it, by the space of 20. yeares, without receiving any rent for the same, and after grants the said Land
to

to the Tennant by *Coppy*. This grant is good and a good Uſer of the *Coppy hold*. But if after the ſaid ſeſſure awarded, an *Eſtranger* had entred and Diſſeiſed him of his Land, and made a *Feoffment* in Fee thereof; And after the Lord re-entred, and grants the ſame againe by *Coppy* unto the firſt Tenant, this grant is not good, by reaſon of the Uſer of this Land.

If the Lord have uſed at the admiſſion of his *Coppy-hold Tenants*, ſometime to take for a Fine two-pence, or ſometimes fourepence for an Acre, ſometimes twelve pence an Acre, this Uſer is ſo uncertaine, that it maketh the Fine arbitrabl at the Lords will.

If the Lord of a *Mannour* have uſed time out of minde, to admit his *Coppy-hold Tenants* without Fine, this uſage ſhall binde the Lord, as well as a Fine certaine.

If the Lord have uſed to have certaine work-dayes of his Tenants, and that hath not been uſed by the ſpace of twenty yeares laſt paſt; yet that *Non-uſer* is no diſcharge to the *Tenants*, ſo that there be any in life that can remember the ſame.

If the Tenants have uſed when they ſow their Lands, to pay the Lord Rent-corne, and when it lyeth in Paſture, to pay their Rents in Money, this is a good Inter-uſer.

E

If

If the Tenants have used to pay to their Lord every fourth yeare a double Rent, and every sixt yeare an halfe Rent, this is a good Inter-user.

If the Tenants have used to have Common of Pasture in their Lords Woods, for their Horse-Cattle, and they put in their Neate-Cattle, and destroy the Woods, this is an abuser. But yet it is but Fineable, and no Forfeiture of the *Common*, which they might have rightfully used: No more then if they have *Common* for a certaine number of Beasts in the Lords Soyle; and they will exceed the number; this abuse by their Surcharging, is onely fineable, and no Forfeiture.

If a man have a Market to be used one Day in a Weeke, the *Non-user* thereof is not forfeiture. And if a man have a Market to be used on the *Fryday*, and hee keepeth the same *Fryday* and *Munday*, the *Mis-user* of the *Munday* is no forfeiture of the *Fryday*.

If a Man have a faire to be used two day, and hee keepes it three dayes, this abuser is a Forfeiture.

If a man have a Faire for one Day, and hee will.

will keepe it two dayes, and that is presented in the *Exchequer*: If the party being called by *Processe*, do clayme both dayes by Patent, upon sight whereof it appeares he ought to have but one day by his Patent, and the other by Prescription, though the Prescription be found against him, and that Day lost, yet he shall enjoy the other Day.

If a Man prescribe to have a Faire yearly upon *Bartholmew day*, and if the same doe fall out on the Sunday, then to keepe the same the next Day following, this is a good *Prescription*.

If the King doe grant to the Citizens of *Norwich* the *Franchises* and *Liberties* that *London* hath, and the *Franchises* and *Liberties* that *Southampton* hath: If the Citizens of *Norwich* doe abuse one of these *Liberties* that *London* hath; this is a forfeiture of all those *Liberties* that *London* hath, and of no other. But if the King doth Incorporate a Towne, and giue them by the same Patent Speciall *Franchises* and *Liberties*, the abuser of the one of these, is a forfeiture of them all.



THAT EVERY CVSTOME
must be reasonable ; and what
shall be sayd, *A reasonable
Custome.*

Every good *Custome* is groundd upon
good *Reason*, and that shal bee sayd in
Reason a good *Custome*, that in reason is a
good Law ; for *Law* and *Custome* be of that
affinity, as both doth allow like reason, and
both doth forbid like inconveniences. And
the finall effect of both to Discusse and to dis-
cerne every mans true right, and to give to
every man that which is his owne. For al-
though *Custome* in some cases differ from
Law, and doth admit execution of some
Acts without some ceremonies and circum-
stances as be required by the Law : yet the
end and effect of *Custome* is to maintayne the
like reason that Law doth, and to avoyde the
like inconveniences.

And therefore if a Lord will *prescribe* to
have

have such a *Custom* within his *Mannour*, that if the *Beasts* of any of his *Tenants* do him any *Transgresse* upon any of his *Demeasnes*, and there betaken *damage feasant*, that then hee may detayne them untill the owner shall satisfie him for his harmes, as himselfe shall require. This is no reasonable *Custom* that he should be his owne Judge. But to *Prescribe*, that if any of the *Coppy-holders* *Beasts* transgresse, &c. That the same be presented at his Court, that there should be a forfeiture of his *Coppy-hold*, this may be called a reasonable *Custom*.

If *Tenants* of a *Mannour* will *Prescribe* to hold without paying any *Rents* or *Services* for their *Coppy-holds*, this is no good *Custom*. But *Prescribe* to hold by *Fealty* for all manner of *Services*, is good and reasonable

If the Lord will *Prescribe* never to hold a Court, but when it pleaseth himselfe, this is not good. But to *Prescribe* never to hold a Court for the Speciall good of any one *Tenant*, except the same *Tenant* will pay him a fine for the same, is good and allowable.



THAT EVERY CVSTOME
ought to be certaine; and what shal
be sayd, a *Custom* certayne.

There is nothing more required in all
Lawes and *Customes*, then certainty, for
incertainty in all *cases* maketh confusion, and
therefore *Law* and *Custom* doth also agree in
this poynt, that without some kinde of cer-
tainty, neyther *Law* nor *Custom* can be good:
for in divers *cases*, where one thing may be
taken to divers intents, and the circumstances
of the *case* such as to which intent the thing
was done, cannot be certainly judged, there
the same thing so doubtfully done, shall to
all purposes be judged voyde. And incer-
tainty of *Customes* and *customary* causes, grows
chiefly three manner of wayes. That is to
say, sometimes of incertainty of the Per-
sons: Sometime the incertainty of the things;
and sometimes the incertainty of the cause:
and in some of these *cases*, though there
be

be at the first a Semblance of incertainty ; yet by Circumstances and Contingents, the incertainties may be turned into Certainties. As if the Lord of the *Mannour* will prescribe, that whensoever any of his *Coppy-holders* dye without Heires, that one other of the *Coppy-holders* of the same *Mannour* shall Till the Land for the yeare following ; and therefore this is no good *Custome*, because the intent neyther is, nor can be certaine, which of the *Tenants* shall performe this Service.

But if the *Custome* be, that if a *Coppy-holder* dye without Heire, that then the eldest *Tenant* of that name, of the sayd *Mannour*, shall have this Land ; this is a good *Custome*, and contayneth in it selfe sufficient certainty.

If a *Coppy-ho'der* doe Surrender two Acres of Land into the Lords hand, the one to the use of *I. S.* and the other to the use of *I. N.* and doth not name in certainty who shall have the one Acre, and who shall have the other, the limitation of this use is voyd, for this incertainty.

If a *Coppy-hold* be Surrendred to the use of *I. S.* and his Heires, untill hee shall marry

marry *A. G.* and after the sayd marriage, then to the use of them two in taile speciall, if after they doe marry, then is the Surrender to them in taile, and till then, to him in Fee.

If the Lord will *prescribe* to have of his Coppy-holders in the time of peace two-pence an Acre of Rent, and in the time of Warre foure pence an Acre of Rent, this is good *Prescription*, because there is a good consideration of the cause of this incertaintie : But to pay unto the Lord two-pence an Acre Rent when hee will, and foure-pence an Acre Rent when hee will, this is no good *Prescription*, because there is neither good reason nor consideration heereof, nor can it ever be reduced into any certaintie.

THAT

THAT CUSTOME MUST

bee according to Common right.

And what shall be said such a

Custom, and what not.

CUSTOMES and Prescriptions, must be according to Common right, that is to prescribe, that is to have such things as is their right, and reason to have, and not by Custome of Prescription to claim things by way of extortion, or thereby to exact Fines of other things of his Tenant without good cause, or consideration.

If the Lord will prescribe to have of every of his Coppy-holders, for every Court that shall bee kept upon the Mannour a certaine sum of money; this is no prescription according to common right; because he ought for Justice sake to doe it gratis.

And so it is if the Shriefe will prescribe

F

to

4. Henry 4.
Averry 66 14.
Hen. 4. Schou.

to have a certaine Fee, for keeping his Turne;
this is not a good prescription.

But if the Lord will prescribe to have a cer-
taine Fee of his Tennants for any extraordina-
ry Court purchased, onely for the benefit of
one Tennant, as for one Tennant to take his
Coppie-hold, or such like, this is a good pre-
scription according to the common right.

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19. Bz. R. 3. 16

13. Hen. 7. 16.

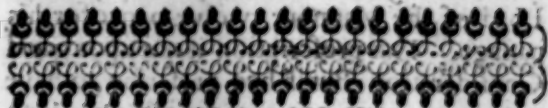
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If the Lord will have of any of his Tennants
that shall commit a pound Breach, a hundred
shillings for a Fine, this is good *Prescription*,
but to challenge of every stranger that shall
commit a Pound Breach a hundred shillings,
this is no good prescription.

If the Lord will *Prescribe* that every of his
Coppieholders within his Mannour that shall
marry his Daughter without licence shall pay
a Fine to the Lord; this is no good *Prescripti-*
on according to common right.

THAT



THAT A CVSTOME

muſt be upon a good Conſideration, and what ſhall bee ſaid ſuch a Cuſtome, and what not.

Conſideration is a great effect in all Lawes and Cuſtomes, and hath as great an operation, as any one thing belonging to the Law, for in moſt cauſes it onely guideth and directeth Rights, properties, uſes, and eſtates, ſometimes according to the limitation, and ſometimes contrary to the limitation, as well in caſes of *Cuſtome*, as in caſes of common Law, for conſideration is the beginning of all Cuſtome, the ground of all uſes, the reaſon of all rights, and the cauſe of all duties: For without Conſideration no Cuſtome can have continuance; nothing is wrought by any conveyance, no intereſt transferred, no right remooved, no propertie changed, nor duty accrewed. As if the Lord of a Mannour will preſcribe, that whoſoever paſſeth the Kings high way, which

lyeth through his Mannour, shall pay to the Lord of the Mannour twelve pence for his passage. This prescription is not upon good Consideration: But if hee prescribe to have a penny of every one that passeth over such a Bridge, which the Lord of the Mannour doth use to repaire, this is good prescription upon good consideration. If the Lord will prescribe to have a Fine at the Marriage of his Copy-hold Tenants, in which the Custome doth not admit the husband to be Tenant by curtesie, nor the Wife to be Tenant in Dowre, or have her Widdowes estate; the prescription of such a Fine is not good: But in such Mannour where the Custome doth admit such particular estates, there a prescription for a Fine at the Marriage of his Copsy-holders, is upon good consideration.

If a Copsy-hold surrender his Land to the use of I. S. so long as I. S. shall serve him in such an Office; if I. S. refuse to serve, his estate doth cease.

If a Copsy-holder doth surrender his Land to the use of a stranger, in consideration that the same stranger shall marry his daughter before such a day; if the marriage succeeds

succeeds not, the stranger takes nothing by the Surrenderer : But if the Surrender bee in consideration, that the stranger shall pay such summe of money, at such a day, though the money bee not payed, yet the Surrenderer standeth good.

If the Coppy-holder in consideration of twentie pounds to bee payd by I. S. doth make a Surrender of his Lands to N. R. this Surrender is to the use of I. S. because of the Consideration, expressed in the Coppy, and not to the use of N. R. But if in the Coppy the use be expressed to N. R. and no consideration mentioned, the use expressed shall stand against any consideration to be averred.

THAT



THAT A CVSTOME MVST
*be compulsory ; and what shall be said
 such a Custome, and what not.*

CUSTOME or Law must be *Compulsary*, and not at the liberty of a man ; whether he will performe it or not ; for then it were of no force ; for all Customes and Lawes have their effect in two poynts. That is, in bidding that which is just, and in forbidding the contrary : So that Lawes and Customes are restrainers of liberties, and do demaund execution of Justice ; not that every man should have, or doe what they would ; but that which by Justice they ought, whereunto by duty of Law and Custome, hee is compellable ; for otherwise it were Voluntary in him, which were to the infringing of the Law and good order : As the Poets,

*Oderunt peccare boni virtutis amore,
 Oderunt peccare mali formidine pœna.*

If

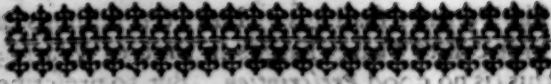
If the Lord will *prescribe* that every of his Tenants shall give him ten shillings a moneth, to beare charges in time of Warre; this is no good *Prescription*. But to prescribe that they ought to pay ten shillings, a moneth, &c. this is good. For payment is *compulsary*, but gift is *Voluntary*.

If a Coppy-holder doe Surrender his Land to the use of *S.* so that the sayd *I. S.* do pay him twenty pounds at such a day. If *I. S.* please to pay the same, this is an absolute Surrender, and not conditionall, because the *compulsary*.

But many Customes there are which at the beginning were Voluntary, and now by continuance are growne *Compulsary*. According to the Civill Law. *Qua initio fuerunt voluntatis, ex post fact. fuerint necessitatis;* which also agreeth with the Common-Law in many cases, as I have partly touched before.

THAT

THAT



THAT A CVSTOME MVST
be without preiudice to the King, and
by what prescription the King shall
be bound, and what not.

THE King hath that Prerogative over
 his Subjects, that hee is not tyed to time
 as a common person is, for though a com-
 mon person may *loose* his right by *non* claime
 within a certaine time, the Kings right is still
 to be *preserved*, for *Nullum tempus occurrit*
Regi. Yet in *speciall cases* where the King is
 not Intituled agaynst such *prescription* by
 matter of Record, there such Customes shall
 bind the King.

As for example, if a Coppy-holder *pre-*
scribeth that he holdeth of the King by Cop-
 py, this is good, and by fine certaine, and
 not arbitrable: to have Waife and Strayes,
 and Wrecke (but not *Cattalla feloni fugito-*
rum,) and *utlagatorum* without Charters.

The Kings *Advowson* shall never fall into
 lapse for not *presenting* within fixe moneths.

THAT



THAT A CVSTOME OUGHT
to consist of perdurableness of Estate,
and of an able capacity.

TO those former parts whereupon I have declared a good Custome to consist, may be added to eyther parts, *viz.* That he which will claime by Custome, must have a sufficient and perdurable estate to *prescribe*; and also in his owne right, or in some others, a sufficient ability or capacity to *prescribe*.

Touching the first, it is to be understood that hee which will *prescribe*, must have a certaine and indefeazable estate, and not otherwise. As if a *Tenant* at Will, or at Sufferance, after hee hath occupied the Land forteneares, will *prescribe* to have the same forteneares, this is not good. But a *Tenant* at Will after the Custome, although he came in at the first by the Lords will, yet doing and paying that which hee ought, hee may *prescribe* to hold the Land whether the Lord will or no: And although a Coppy-holder may *prescribe* in this forme against his Lord,

G

yet

yet against an Estranger, for a common or such like kind of profit, hee cannot *prescribe*; but in the right of the Lord: neyther yet can a Tenant for life, or for yeares, *prescribe* in the right of their owne Estate onely, because it lacketh continuance to make a *custom*, or *prescription* (except) in some cases of necessity, the Lord of a *Mannour*, or of a Patronage for yeares or life, may grant a Coppy in perpetuity or *presentation* for a longer time then the estate of the Grantor doth continue, and this is admitted, *causa necessitatis*, and not *Iure prescriptionis*.

To the second, Capacity must be in himselfe that doth *prescribe*; which Ability and Capacity must consist in the person of him that doth *prescribe*: For as *prescription* may be sometimes in respect of estate, *Mannour*, *Lands*, or *Offices*; so may *prescription* sometimes be in respect of *person*, which *person* is not to be understood of a private person; but of a body Politicke, not that many *persons* may *prescribe*, except the same be incorporate, and to *prescribe* in respect of their incorporate Capacity, and not in respect of their private Capacity. As if the Inhabitants of *Dale* will *prescribe* to have Common in the Soyle of *S.* this is no good *prescription*; for

for that they be not Incorporate, they must *prescribe* that H. Lord of the Mannour of Dale, for him and his Tenans within the said Mannour, have used to have Common within the sai Soyle: so is it for Coppy-holds, for they must *prescribe* in the name of their Lord, in such a case.

If a man prescribe that hee and his Ancestors have had such an Annuity, this is not good: But if a Bishop doe prescribe that hee and his predecessors have had such an annuity this is good.

The pleading of *Prescription* must bee used in forme of Law, as other matters that be pleadable, and forme must be used (likewise) in pleading of Coppy-holds, and other Customary Titles for avoyding of confusion and discord, as well as in other cases of the Common Law, the forme of pleading prescription doth differ as the quality of the thing, whereof *prescription* is made, and sometimes doth differ, as the persons doe differ which make the *prescription*: As if a Coppyholder makes his Title to his Land by *prescription*; he must plead that the same Land is, and hath bene time out of minde *Demised* and *Demiseable*, by the Coppy of Court Role, according to the custome of the Mannour whereof it is holden.

If two men as yonger brethren will make their Title to Land in *Gavell-kinde*, they must say, that the same Land is of the *Tenure* and Nature of *Gavell-kinde*, which time out of minde, have bin parted and partable between Heires males.

So if the yongest Sonne maketh his Title to Land in Borough English, he must plead, that time out of minde, the *Custom* of the said *Mannour* hath bin, that when, or at what time soever, a Coppyholder dyeth *Seised* of any Coppy-hold Lands in the same *Mannour*, having divers Sonnes, that the same hath used *Jure Hereditario*, to descend unto the youngest Sonne, &c.

And as the forme doth differ in the things wherof the *Prescription* is commonly made, so doth it differ as the Persons do differ, which *prescribe* as a private person shall *prescribe* in him and his Ancestors, whose estate he hath. An Incorporate person in him and his Predecessors. A Lord of a *Mannour* in him and them which were Lord of that *Mannour*.

A Sheriffe, in him and those which have beene Sheriffes of the same County.

A Steward of a *Mannour* in him and those which have beene Stewards there.

A Free holder in him and them which have
beene Stewards to the said Lord.

A Coppy-holder shall *Prescribe* against an
Estranger, that the Lord of the Mannour, for
him and his Tennants at will, have used the
like, &c.



WHAT NECESSITY A

Court Baron is of, whereof it doth

Consist, how it is defined, and

what shall bee said a suf-

ficient *Court Role* to make

a Coppy-hold.

EVERY Manour hath a *Court Baron* inci-
dent to it, of common right, and com-
mon necessity, and this *Court Baron* con-
sisteth of foure speciall parts *viz.* The
Lord, the Steward, the Tennants, and the
Bayliffe.

A *Court Baron* is defined to bee an assem-
bly of these partes together, within the

said Mannour, to take *Councell*, care, and enquire of causes concerning the same Mannour: to see justice duely executed, the acts and ordinances there done to bee recorded in the Roles of the same Court; which Roles are the evidence of all ordinances, duties, customes, and conveyances, the Lord and Tennants of the said Mannour, and are to bee entred by the Steward or an Officer indifferent betweene the Lord and his Tennants, and the same Roles to remaine with the Lord, thereby to know his Tennants, his Rents, and his Fines, his Customes, and his services.

And the particular grant of every *Coppyhold*, to bee copyed out of the Roles, the coppies thereof to bee delivered to every particular Tennant, neither can they make any other Title to their said Tennements, but by their said *Coppy*.

If the Lord of the Mannour having *Coppyhold* Lands Surrendred into his hands, will in the presence of his Tennants out of the Court, grant the same to an other, and the Steward entreth the same into the Court Booke, and maketh thereof a *Coppy* to the grantee

grantee, and the Lord dye before the next Court, this is no good Coppy to hold the Land.

But if the same Surrender, and grant bee presented at the next Court, in the life of the Lord, and the grantee admitted Tenant, and a Coppy made to him, this is good Coppy.

If the Lord of a Mannour having ancient Coppy-hold, in his hands, will by a deed of Feofment, or by a Fine grant this Land to one to hold at the will of the Lord, according to the Custome, yet this cannot make a good Coppy-hold.

If the Lord in open Court doth grant a Coppy-hold Land, and the Steward maketh no entry thereof in the Court Roles, this is not good, though it bee never so publicke done, nor no Collaterall prooffe can make it good.

But if the Tenant have no Coppy made unto him out of the Role, or if hee loose his Coppy, yet the Roles is still a sufficient tytle for his Coppy-hold, if the Roles bee also lost, yet it seemeth that by prooffe
hee

hee can make this good.

If Ordinances or by Lawes bee newly made, and Recorded in the Roles of the Court, if the Court Roles bee lost, the by Lawes be set at liberty, yet if there be any ancient customes or priviledges by *Prescriptions* not entred in the Roles, &c. though the Roles be lost, yet they remaine good.



WHO SHALL BE SAID
such a Lord of a Mannour as
*bath power to grant a
Corry-hold.*

A Lord to grant or allow a Corry-hold, must be such a one, as by *Littletons* definition is seised of a Mannour, so that he must be in possession at the time of the grant, for although hee have good right and title, yet if he be not in possession of the Mannour, it will not serve: and on the other side, if hee bee in possession of the Mannour, though hee have
neither

neither right nor title theretunto, yet in many cases the grant and allowance of such a *Coppy*, is good as *Donus de facto, sed non de iure*. And in some cases a *Coppy-hold* shall be adjudged good, according to the largeness of the state of the Lord that granted the same, and in some cases shall continue good for a longer time than the estate of grantor was at the time of the grant. But that is to be understood in case of necessity, otherwise it will not be allowed.

If a man seised of a Mannour, in which are divers *Coppy-holds* demisable for lives, is deceased, and the defessor granteth a *Coppy-hold*, being voide, for three lives, this is not good to binde the Defessed, otherwise it is of a *Coppy-hold* of Inheritance, because it is necessary to admit the next heire.

If a man have a Title to enter into a Mannour for a condition broken, and he granteth a *Coppy-hold* of the same Mannour (being void) at a *Court Baron*, this is a good grant, for the keeping of the *Court* amounteth to an entre in the mannour.

A man seised of a Mannour for life,
H where-

whereunto bee Coppy-hold Inheritance
 belonging, and one Coppy-holder Sur-
 rendereth to the use of a stranger in Fee, the
 Lord may grant this in Fee, and this Grant
 shall binde him in the reversion, but the
 Coppy-holds being demisable for lives, it
 is otherwise, for then hee cannot upon Sur-
 render grant the same, longer, then the
 life of the Grantor. But if the Lord of a
 Mannour for yeares, or during the minority
 of a Ward, of which the Coppy-holds
 are demisable for three lives successively,
 and not servingly, in this case if the
 Coppyholder dyeth, the Lord may
 grant the same, being voide for three lives,
 at his pleasure, and this shall binde him
 in the Reversion, or the heire at his full
 age.

WHO

WHO SHALL BE SAID

such a Tenant as may be a

COPPY-HOLDER.

Although there seemeth some shew of difference betweene Coppy-holders, and Customary Tenants, yet differ not they so much in nature, as in name, for although some bee called Coppy-holders, some Customary, some Tenants by the Virg, some base Tenants, some bound Tenants, and some by one name, and some by another; yet doe they all agree in substance and kinde of Tenure, though differ in some ceremonies and kinde of serving, and therefore the name is not the matter; but the Tenure.

Hee shall bee said a person sufficient to be a Coppy-holder, who is of himselfe able, or by an otherto doe the service of a Coppy-holder; as an infant may be a Coppy-holder for his Gardein, and prochein

*Infant Itin.
Covert Lunatick
Nemy 13. Eliz.
Dier 301*

any may doe the service ; so may a feme Covert, and her husband shall doe the service : But a lunaticke, or Ideot cannot bee a Coppy-holder, because they cannot doe the service themselves, nor depute any other : and the Lord shall retain the Coppy-hold of an Ideot, and not the Queene.

A Bond-man or aliene borne may bee a *Coppy-holder*, and the King or Lord cannot seise the same.

But a man cannot bee a *Coppy-holder* unto a Mannour, whereof hee himselfe is Lord, although hee bee but *Dominus pro termino annorum*, or in *Invenxoris*.

WHAT

WHAT SHALL BE SAID

such Lands or other things as de-
 misable by *Coppy*, and may be
holden by Coppy.

IT may bee said of *Coppy-hold* Lands, as is
 lafore said of the Tenants ; they may dif-
 fer in name, but not in nature : As some cal-
 led *Coppy-hold* Lands, some customary
 Lands, some bound Lands, some base Lands,
 some ancient Lands, some demeafne Lands,
 some encrease Lands, some Mollendes,
 some waste Lands, some warke Lands,
 some loose Lands, and some Vierge
 Lands.

And although *Coppy-hold* Lands be spe-
 cially so called, because it is holden by Cop-
 dy of Court Role ; Customary Lands be-
 cause of some speciall Custome ; Bond Lands
 because of the bond, Tenure, Base Lands be-
 cause of Base Tenure, ancient Lands be-
 cause

cause of the old demise, demeasne Lands because of its new demise, and late being the Lords owne Mannour; Increased Lands, because it is late purchased, and laid to the Mannour: Mollands, because it is holden by easie rents, or no rents at all, waste Land, because it hath beene lately approved out of the waste of the Mannour, Worke Lands, such as hath common appendant belonging to it, Lose Land, because it is holden by uncertainty, Rents and Verge Land, because it is holden by the Veirge: Yet al the said lands are holden in one general kinde, that is by Custome and Continuance of Time, and their diversity of their names doth not alter the Nature of their Tenure.

It seemeth by *Littleton*, that onely Lands and Tenements are demisable by Coppy: And therefore if the Lord of a Mannour will grant the rent charge, or the office of Stewardship, or Baylewicke of his Mannour by Coppy, or a common in grosse by Coppy, these bee not good grants, because they tye not in Tenure, and also because the *Customes* doth not extend unto them, but common appendent to a Tennant of Coppyhold Lands may bee demised with the Tennant by Coppy.

Demeane Lands which within time of memory,

may have been occupied by the Lord himselfe, or his Farmour, is not good to be granted by Coppy, because of the newness of the grant, yet by continuance of time it may be good Coppy-hold, when the memory of the contrary is worne away, as hath beene said before. Neither can the Lord that granted such a Coppy, put out his Coppy-holder during his life that granted the same, because hee should not bee received to disable his owne grant. If a Coppy-holder doe Surrender his coppy-hold into the Lords hands, meerely to the use of the Lord, I doubt whether the Lord may grant this againe by Coppy, as hee may where it comes unto him by forfeiture, or by escheat, because it is made percell in demesne by his owne acceptance and not by the Act of the Law, *quare*.

Note that neither the Statute of *West. 2. de bonis Conditionalibus*, nor any other Statute, that hath not Coppyholds, named in it, doth extend to Coppy-hold Lands, as the Statute *Staple. 27. Ed. 3.* nor the Statute of *Hereſie 2. Hen. 5.* nor the Statute of *Will 32. Henry the eight*, nor the Statute of *Limitation*, made the same yeare as is now

But though a gift in Taile of a Coppyholder, be not contained in the same Statute of William the Second: Yet I thinke in such Mannour, were time out of minde they have used to make gifts in Taile of Coppyhold Lands, there such gifts bee good at this day, and they may make protestation in the nature of *Avy writ*, as appeareth by *Littleton*.



WHAT SHALL BE SAID
a good Surrender.

AS in the conveying of Free Lands there is required some ceremony and publick notice, so is there in the assuring of Copy-holds necessary some publicke Act to bee done therein, which is the Surrender

der. In which ceremonie there is contained two effects, the one what is surrendered and to whose use, the other that it be done with the Lords good will, and for that cause it is surrendered into his hands. And although of the meanes a Mannour of this surrender there bee divers kinds, as within some Mannors to Surrender by the hand of another Coppy-holder, and in some other to surrender into the Stewards hands, in some to the Bayliffes hands, and some by giving a yard to the Steward, in some by giving his hand, or his glove, which bee outward signes of his intent: Yet in all these kindes the words of Surrender must not bee divers, but one or to one effect, and must bee either words of Surrender expressed, or words of Surrender implied, and therefore if a Coppy-holder will bargaine and sell his Land to I. S. and this is found by the Homage, and I. S. praieth to bee admitted Tenant, yet the heire of the Coppy-holder shall avoide the Admission, because of the insufficiency of the Surrender, taking by the words of Bargaine and Sale, and not by words of Surrender, *opi. Sur. Dier 3. Eliz. Low ill dit. & relees ne vault wren Come no-surrender.*

If a Coppy-holder commeth into the

Courts

Court, and desireth his Lord to admit his sonne to bee Tenant in his fathers place, this seemeth a good Surrender to the use of the sonne.

If a Coppy-holder will in the presence of other Coppy-holders of the same Manour, say that hee is content to Surrender his Coppy-hold Landsto the use of *I. S.* this is no good Surrender: But if hee saith hee doth surrender into the hands of the Lord to the use of *I. S.* if the Lord will thereunto agree, this is a good Surrender, whether the Lord will or not.

If the Tenant will Resigne his Interest in the Court, into the Lords hands, therewithall for the Lord to doe his will, this is a good Surrender if it be accepted.

If a *Coppy-holder* will say he will bee no longer the Lords Tenant, though these words bee recorded, yet this is no good Surrender.

If a Coppy-holder for life take a new Estate

Estate for life by Coppy, this is a surrender of his first estate.

But if a Coppy-holder for life will take a Lease of the same by Indenture for life, this is not a good Surrender of the Coppy-hold:

Quere.

If a Coppy-holder commeth to the Lord, and telleth him, that for the preferment of his Sonne in marriage, with such a mans daughter; his will is to give his Land presently to his Sonne, and desireth the Lord that he would be contented therewith, this is no good Surrender.

But if he had said these words in the Lords Court, and the same recorded, or found by Homage as a Surrender, and so presented, then this had beene a good Surrender without any other words of Surrender.



THAT A COPPY-HOLDER

must bee admitted Tenant, and
what shall bee said a good Ad-
mittance of a COPPY-
 HOLDER.

By Sergeant
Wallesley
 12. Eliz. 291
 292.

IF a Coppy-hold descend unto a married woman, and her Husband take the profits thereof, and suffer a Court day to passe without admittance of his Wife, and then the Wife dyes, the Husband shall not be Tenant by the curtesie, but in the 12. *Eliz. Dyer* 291. 292. it seemeth that the contrary should be the better opinion.

30. Hen. 8,
Dyer 42. 16.
 there

An entry before admittance is no forfeiture, without an especiall custome pleaded, but the heire may make a forfeiture for *non* payment of the Rent, as the Custome was there pleaded before admittance.

If a Coppy-hold be Surrendred unto the use of a stranger upon condition, and the condition

condition be broken, the party that made the Surrender may reenter and bee a Coppyholder to all Intents, without any new admission, for he did depart with the Land but upon a condition.

Also if a Surrender of a Coppy-hold bee made to the use of a stranger for Life, and the Lord makes a grant thereof, to the same stranger in Fee, this shall not binde the heire of the Tenant, but that hee may enter after the death of the grantee, for hee tooke the Land by the Surrender, and not by the grant made by the Lord : for the Lord is but an instrument for the conveyance of the Land, for if I make a Surrender unto the Lord *ea Intentione*, that hee shall grant over unto such a man, if the Lord will not grant the same, I may then reenter, but the stranger hath no meanes to enforce the Lord to grant the same over unto him, but hee may maintaine Trespas against the the Lord, if hee doth suffer mee to reenter, and this is the opinion at this day.

The Lord of a Mannour hath that prerogative in his Coppy-holders, that no stranger can bee his Tenant thereof, without his speciall assent, and admission, and for that

cause a Coppy-holder shall not bee lyable to any executions of Statutes, or recognizances, neither shall be *Cassets*, in debt or *For-midon*, neither are conteyned in any the Statutes afore named, for if it were, then should the Lord be forced to have a Coppy-holder whether hee would or no, which is against the nature of a Coppyhold.

And therefore a stranger can never enter, though a Surrender made to his use bee accepted, except hee bee admitted Tenant, but otherwise of the heire, for hee may enter and take the profits before the Admittance after the death of his father.

Admittance may be three manner of waies, an expresse admission, by the words entred into the Court Role, *viz. unde admissus est Tenens*, or by acceptance, or implication, as if the Lord will accept the rent by the hands of a stranger, third by admitting one Coppy-holder, in some cases the Lord shall admit another by implication to some purposes, and to these three may bee added a fourth, which is by the entry of the Sonne, after the death of his Father, and the Tenant

Tenant in Dower after the death of her Husband, which is Lawfull without admission, till the next Court, and then they must pray to bee admitted, &c.

If a Coppy-holder doe surrender his Land to the use of *I. S.* and the Lord doth grant the same to *I. S.* accordingly, and thereupon hee enters, yet hee is no good Coppy-holder, till hee bee admitted: But if *I. S.* appeareth at the Lords Court, and passeth on the Lords homage, or the Lord accepts his Rent or his Fine for the same Coppy-hold, now is hee become a good Coppy-holder without any further Admission.

If a Coppy-holder surrendreth his Land to the use of *I. S.* for life, the Remainder to the use of *R. N.* for life, and the Lord granteth the same accordingly, and admitteth *I. S.* it seemeth this is a good admission to *R. N.* that is in the Remainder.

A Coppy-holder in Fee dyeth seised, his heire may make a surrender to the use of a stranger, without admission: *quare.* But if a Coppy-holder surrender to the use of *I. S.* this *I. S.* cannot surrender to the use of a stranger,

In Trespas by
Hagger against
Felston.

stranger, without being first admitted him
 selfe.

If a Coppy-holder Surrender all use of the
 joyntly, and they are admitted, if the one
 of them dyeth, the survivor needeth not to
 bee admitted againe for the moytie : But
 if a Coppy-holder having Issue two daugh-
 ters, and they are admitted, and then the
 one of them dieth, the other must needs be
 admitted for the other moyty, for hee takes
 the same by descent.

*L' heire dun Coppy-holder part prender profits
 avera accion de travers et Ferra, Post fratris
 sufficicum devant admissance 12. Eliz. 291. et
 part faire lesses per ans. Denby et Bullock.*

WHAT



WHATSHAL BE SAID

a forfeiture of a C O P.

PY-HOLD.

THE Tenant by Copsy standeth bound by his Tenure to the Lord, that if hee doth any thing to the Lords dis-inheritance, or in some cases if he doth transgresse the duty of a good Tenant, he shall forfeit his Copsyhold : but because all offences are not equall, so likewise there are degrees of punishment ; for there is a difference betweene offences done wittingly and willingly, and faults ignorantly and unwillingly committed.

And therefore some offences are forfeitures *ipso facto*, some are onely forfeitures when they are presented and not before, and some are onely fineable.

Forfeitures *ipso facto* are offences that lye Mis-felans.
in mis-felans; & be apparent forfeitures, when
K they

Non-fesans. they are presented only, are offences that lye in *non fessans*, and is not apparent nor affirmatively to bee proved without presentment.

Fincable.

Offences Fincable, are offences of contempt, and not of dis-inheritance.

As if a Cappy-holder will in the presence, and sitting of the Court Baron, say that he will extort and exact undue Fine of his Tenants, or such other words, this is onely Fincable.

But if he will stand there say, being called forth to bee sworne of his homage, that hee is none of the Lords Tenant, this makes a Forfeiture of his Cappy-hold.

But if hee will there say, that hee will shortly demise away that hee will bee no longer of any of the Lords Cappy-holders, this is neither cause of Forfeiture, nor Fine.

If a Cappy-holder *Sendente curia* doe strike an other Cappy-holder, or any other stranger

stranger, this is onely Finable, and maketh
no Forfeiture.

If the Steward sheweth forth a Court
Role to proove that *I. S.* is a Coppy-holder
and this notwithstanding hee will in the
Court say, that hee is a Free holder and
sheweth forth a Free deed and claime there-
by, and teareth in peeces the Court Role
and publisheth the free deed, this a cause of
Fine and Forfeiture.

But if the said Tenant will there upon some
Colourable doubt, and question which may
arise, whether hee bee a Free holder or a
Copp-holder say to the Steward, because
hee knowes not whether the rent that hee
should pay, bee Free rent, or Coppy-hold
rent, he will pay it with protestation that the
rent may be recorded as it shall fall out, and
with like protestation offer and do his service,
though in truth hee bee a Coppy-holder,
yet this deserveth neither Fine or Forfey-
ture.

If a *Coppy-holder* cannot pay his rent, and
will not doe his service, this offence is on the
Negative, and maketh no forfeiture till it be
presented.

*Tenant per Coppie ne poest facere wast ne couper
bois per vender mes pro reperacontantum 9 Hen.
4. 12. 43. Ed. 3. 32. . 80.*

But if a *Coppy-holder* doth Alien his Land by Free deed, or will commit waste, or demise his Coppy-hold contrary to the Custome, or will sue a replevin against the Lord, for a Distr. lawfully taken for his Rent or service due, or disclaime in the Land being summoned to the Lords Court, or will there claime it as his free hold, or will in any other Court untile any other Lord unto it, or bee attainted of treason or felonie, or continue out-lawd, or excommunicate, during the Lords Court, or refuseth to goe with his Lord or other commissionours for that purpose in the service of the prince, to suppress Rebels, riots, or unlawfull assemblies. All these offences be apparent mis-felance and forfeiture *ipso facto* without any pre-sentment.

But if a Coppy-holder, being of the grand Inquest at the Assizes or Sessions, shall indit his Lord of any manner of offence committed against the Prince or Lawes of this Realme, or shall upon proces Compulsary give evidence against his Lord, which is
true

in any cause betweene his Lord and an other Common person, or betweene the prince and his Lord without compulsory proces, or shall make any bodily arest of his Lord by the commandment of the Shrieve or other lawfull authority, or shall bring any Action or Suit against his Lord in any of the Queens Courts (except a Replevin case aforesaid) All these last recited, be cause of neither Fines or forfeitures of any Coppyhold.

Also a Coppy-holder not claiming his Coppyhold after the death of his Ancestor within a yeare and a day, at the Court, if any bee, it is a forfeiture for ever per. opin Catline, *Slowelle Case* 372. et c. *il pesse des bone custome in plusors Manors.*

If Coppyholders being on a Jury will not finde the waste committed, or will not present things presentable, this is a forfeiture of their Tenures, if they be Coppy-holders; by the opinion of *Catlin, Dier, and Bracton*. 4. *Eliz. Dier. 211. pe. 31. 6. et 7. Eliz. 233. b. 9. Hen. 6. 44. b.*

If a Coppy-holder will not be sworne to

K 3

present

present such offences as are forfeitures, this is a forfeiture of his estate; so if he alien, or make Coppy-hold free, for tenne pound, the Lord may enter, for they are willfull acts, for which the Lord may enter without presentment, but for negligent offences, as for not doing of services, or not acceptance of a Coppy-hold after the death of his ancestor, the Lord cannot seise without presentment of the homage. And if an infant within the yeare after the death of his ancestor, will not after the Court holden and proclamation made, pray to bee admitted, it is no forfeiture, unlesse the Custome of the Mannour be, that an infant ought to forfeit his estate by such negligence, for it is but a claime at Common Law, which bars not an infant, which hath not discretion. Betweene *Hautrey* and *Buckshire* and one of his Coppy-holders. 12. *Eliz. Rot* 96.

If thirteene Coppy-holders bee sworne in a base Court, and twelve agree to give Verdict, the thirteenth will not, it is not a forfeiture, for it is a good verdict without his assent, and perhaps it is not agreeing to his conscience, and therefore it is not properly a not doing, or deniall to doe his duty.

Quare

Quare, If there be 12. and 11. agree, and the twelfth will not, for it is not a full Jury. *Pasche. 20. Eliz. Co. Bank. ve. 3. Ed. 3. Verdict 10. ou. 11. 29. Ed. 3. ibid. 45. 12 Hen. 4. 10. Sherne.*



WHAT OFFICE OR POWER
entirely, or dividedly the Lord
Steward, Free-holders, Cop-
py-holders, and the Bayliffs,
have in the Court Baron.

Although the Lord, the Steward, the Free-holders, the Coppy-holders, and the Bayliffes of every Mannour, have an intermixt and joynt office, and authority in some cases, and to some purposes: yet to other purposes their office is distinct and divided, and every of them doth occupy severall places, persons, and parts.

The

The Lord is chiefe to command and ap-
 poynt to the Steward, to direct and record
 the Free holder, affirre and judge the Coppy-
 holders to enfirme and present, the Bayliffe
 to attend and execute, &c.

And all these together make a perfect ex-
 ecution of Justice and Judgements in a Court
 Baron, and without all these a Court Baron
 cannot be holden in his proper nature, in re-
 spect of all causes belonging to the perfect ju-
 risdiction of a Court Baron.

And yet a Court Baron may be held by
 use and custome, for some Coppyhold
 causes, though it want one of the said
 parties (*viz*) the Free holders, and there in
 Coppy-hold cases the Steward doth supply
 the place of a Judge: But no other of the
 parts aforesaid, except the Free holders,
 can be missed, or spared in a Court Baron.

But to make some more particular demon-
 stration of their distinct authorities and offices:
 And first the Lord as hee is chiefe in place,
 so is hee in Authority, and occupieth three
 severall Romes, the one of a Chancelour in
 cases of equity, the other of a Justice in a mat-
 ter of right, the third of himselfe in Cases
 Proper

proper and particular to himself.

The Steward doth occupie the parts of severall persons, that is to say, Judge and order in cases of Coppy-hold, and also a Minister, and Register to enter things into the Court Roles, and in both these to bee indifferent betweene the Lord and his Tenants.

The Free holders doe likewise fulfill two parts, that is, to effect, & judge amercemetns, and also to returne and certifie judgements.

The Coppy-holders also doe hold two severall roomes, viz. to enforme offences committed against the Lord within that Mannour, and to present such things as shall be given Charge by the Steward.

The Bayliffe doth also occupie two parts, that is to say, to execute the proces and Commandments of the Court, and also to returne into the Court the Execution of the same proces.

6. *Ed. 6. Bratt. No. case. 24. pl. 387.* the under-steward in Court, without authority of the L. or of the high-steward, may demise Coppy-hold, and

& it is a good grant, for it is in full Court; but contrary it is if it bee out of Court. *Quare*, if the high steward without authority may demise out of Court.

Finis Lectura Calthrop.

A Coppy-holder being indebted, doth *surrender* to his creditor, upon trust that hee shall have the Land to satisfie himselfe of the debt, and then to be *surrendered* backe againe unto him; And after the debt levied, the creditor wil not *surrender*, whereby according to the custome of the Mannour, the Tenant pursues an English Bill to the Lord in his Court, by which the trust is prooved by deposition; the Lord seisseth the Land to the use of the first Coppy-holder until &c. And *Wray* was of opinion, that hee may well so doe, for he hath no other remedy, for the Lord cannot imprison him, as the Lord *Chancelour* of England may doe, and that the custome of deposition is good, though some doe doubt: but *Gawdy* agrees, but hee saith that the Lord cannot retaine and keepe the Land, and if hee should so doe, the other shall have a *Subpena*; whereunto *Wray* agreeth, that hee cannot retaine the Land but

but seise it and grant it over, which without seising hee cannot doe, 25. *Bliz. B.* upon the motion of *Cooke*, who said that 14. *Hen. 4.* 39. and *Fix. B.* 13. are according to their opinions: For a *Coppy-holder* shall not have a *Writ* of *Error*; nor false judgement, upon a judgement against him in Court of the Lord; but hee shall sue by bill, and thereupon the Lord shall reseise the Land, upon false judgement given by the *Steward*, and shall make restitution.

If one recover a debt by plaint in Court *Baron*, those of the Court have not power to make execution to the Plaintiffe of the defendants goods; but they may distraine the defendant, and after the judgement retaine the distress in their hands in safeguard, untill the Defendant hath satisfied the Plaintiffe of that wherein hee is condemned by the Court, 46. *Hen. 6.* 17. See the booke of *Entrees* Fol. 166. 7. *Hen. 4.* 27. In replevin the defendant said, that one *Edward Besall* brought a writ of *Droit* close against the plaintiffe, and one other in the Lords Court in ancient demesne, and declared in nature of Assize, and it was found against the plaintiffe, and damages were taxed; whereby the defendant being then under-Bay-

liffe, by the Stewards commandment, takes the beasts for execution of the damages, and takes and sells them, and delivers the monies to the plaintiffe in Assize; this is a good plea, and yet this is but a Court Baron. And Fol 29. by *Hull*; A man recovers ancient Demeasne-Lands, and damages in a Court of ancient Demeasne, the Bayliffe may take the beasts of him against whom the recovery is &c. for execution of Damages in every parcell of the Land holden of the Mannour, although that Land bee Frank-fee, and it is not denied. 22. *Assize*. 72. agrees with 4. *Hen. 6. mes. Kitoh*. 115. where it is used to make execution by *levari facias*, that is a good Custome. 38. *Ed. 3. Custome*. 133. upon a recovery in Court Baron, the defendants Cattle were delivered in execution,

WHERE



WHERE A TENANT BY

*Coppy may plead a speciall Custome,
which is onely proper to him and
his predecessors before him.*

Ninth *Eliz. Taverner* was sued by the Lord *Cromwel*, for that he had committed waste upon his *Coppy-hold*; he pleads by the advice of *Manwood*, that he and those who before him had the house wherein hee dwelt, had such a Custome by *Prescription*, that they might fell Timber trees, &c. And many arguments were against that Custome, in as much as other Tenants of that Mannour had not such a Custome, but were punishable, and had forfeited their Lands for such waste; also that Custome was against common right, and not reasonable; and after long deliberation of the Judges, it was adjudged, that a Tenant may plead a particular Custome, as if one prescribe to have a way in the Lords Land, &c. And 19. of *Eliz.* one prescribed that he & those of that Tenement his predecessors, had used to have *Common* of estovers in another Mannour, notwithstanding that the other Tenants have not such a Custome, and it was good by the advice of all the Justices.



WHERE THE TENANT

*may cut downe trees, destroy
houses by Custome, and such
like Customs, &c.*

Fourth Ed 6. Justice *Dalisons* Reports,
Sanders and divers Justices; Tenant by
Coppoy of Court Role may prescribe to have
Wood growing upon the Land. *Montague*,
there is such a custome, and so used in the
Counties of *Mid.* Northland and other places.
Browne, it hath beene heere agreed
of late, that Tenant by the Custome may
prescribe to suffer their houses to fall, and
to destroy their houses; so also here, where-
by this is a good Custome. *Montague*,
I have heard a Fable, that a Tenant
by the Custome may digge in the one
part of his house, and burne the other part,
by the Custome: But if you will agree that
the Tenant by Custome shall have the Land
against the Lords Will, to him and his heires
by the Custome; why then may they not
by the Custome cut downe Wood? *Sanders*,

I agree to none of your cases. *Montague*, surely in the *Chancery* it will bee over-ruled against you without doubt, and it is necessary that an Act of Parliament bee made upon it.



WHERE AND HOW

*Tenant by Coppy, may make
a Joynture to his wife of the
same Land.*

A Stranger brings a writ of right against the husband and wife, in the same Court where the Land is by plea, and the husband and wife doe appeare, and the demandant doth Count against them, and the husband and wife doe defend, and say that they have more right then the demander, and offer to try it by Battell; and the demander and Tenants doe Imparle, at which day the demander appeares, and the husband and wife make default, whereby finall judgement is given against them; and at the same Court
the

the Recoverer *Surrenders* the same Land into the Lords hands, to the use of the Husband and Wife, and the heiros of their two bodies begotten; and it was said that this assurance hath been used 1. *Ed. 6. Dalsons* reports.

In Monſieur
Warr reports
whether a re-
covery in
Court Baron
may defeat an
entayle. B. Re-
gis 2. Comment.
21.

Pell et Hikden: Trin. 36. Eliz. Rot 547.
on the Kings bench: Tenant in Tayle, the remainder in Fee, Tenant in Tayle Surrenders to the use of *I. S.* in Fee; *I. S.* suffers a Recovery, and vouches the Tenant in Tayle, who vouches the common vouchee, and by speciall Verdict it was found that there was never any recovery before in that manner, and it is not yet adjudged. *Gawby and Clinch*, that the recovery can not be a Barre, for warranty can not be annexed to an estate at will; also he shall not recover in value, because of the estate at will. *Fenner and Popham* chiefe Justice to the contrary, and that warranty may be annexed to Coppy-hold Land, though it bee an estate at will of the Lord; but as it is an estate in Fee, performing the services and duties, the Law will account them Tenants in Fee: Also recovery in value, being but a fiction in Law, *le common vouchee* shall bee accounted to have the Land in value of the Coppy-hold, within the

the Mannour : and the Vouchee 23.
Hen. 8. Br. Recovery in value 27. that such
 a Recovery is used in ancient demeasne up-
 on a writ of right, and Voucher over, and
 that of a Free-hold there ; yet enquire of
 such a Recovery upon a plaint, there of Land
 of Base Tenure, for that cannot bee war-
 ranted, &c.

But in the Common Bench, in trespasse
 brought by *Comb*, against *Pears* and *Turner*.
Mich. 36. et 37. Eliz. Rot. 14. Bromeley
Brittain Hall in Essex : Tenant in Tayle of a
 Coppy-hold suffers a recovery with Vouch-
 er, where no recovery was before ; the les-
 ser enter, by the Court, that cannot be, but
 he shall have a Formdone in discender ; for
 the recovery in Court Baron cannot availle,
 because a warranty cannot bee anexed to an
 estate which is at the will of the Lord. Al-
 so there can bee no Recovery in value ; first
 because there can be no recovery in value of
 Lands out of the Mannour, and the Cop-
 py-land is at the Lords wil : Secondly Cop-
 py-hold Land is granted by Coppy only, and
 if by the Recovery the Tenant may have it,
 the course and *Custom* of the seignory would
 be destroyed, which shall not bee : Thirdly the
 Lord shall loose his fine, and Fealty also ; for

Adjudged in
 the Common
 Bench, that a
 recovery can-
 not binde an
 entail.

the Coppy is *admissus est tenens, &c. et Dat. Duo de fine pro tali ingressu, &c. et fecit fidelitatem.* Fourthly *et* Fifthly, *Ph. et Mar.* A Coppy-holder Surrenders to the use of his wife for Life, the remainder to the right heires of the husband and Wife ; the Wife dyes, the Husband survives : The question is, who shall hold the Land ; and it was said that if the Husband had no Issue by that Wife , then his Heire shall have it.

CERTAIN E

CERTAINE COPPY-HOLD

cases reported in a cer-

taine BOOKE.

BUT it was said there, that if the Wife had Issue by another Husband, it was there doubted. But it was holden by the better opinion in *Dier*, that the Husband and his heires shall have the Land; yet if the Husband had first two sonnes, the heires of the Husband, and the heires of the Wife, shall have the Land in Common, after the decease of the Wife, and for prooffe thereof hee puts this case: If land bee given for Life, the remaynder to two men and their heires, they cannot have one heire in the case: if the Tenant for Life dye before them in remainder they shall bee Jointenants, and the Heire of the survivor shall have all: But if none in remainder bee in life, when the Tenant for life dyes, then the heires of them in

the remainder shall hold in common.

Thirty seventh *Henry* the eighth A Coppy-holder to the intent to make an assurance to his Wife, suffers another to bring a Writ of right in the Coppy Court, and they joine the Battell, and at the day the Husband and Wife make default, and finally judgement was given, and after the recoverer Surrenders the same Land into the Lords hands, to the use of the Husband and Wife and their heires; and a good assurance *pur Cur.*

A Coppy-holder brings an action upon the case against the Lessee for waste and good.

A Coppy-holder makes a Lease at Will to another, who commits Waste, which is a cause of Forfeiture; the Lessor brings an Action upon the case against the Lessee: By *Walsb. Weston and Pier.*, the Lord may enter, and have Trespasse against the Lessors his Tenant; and therefore it is reason that hee shall bee recompenced: But the Lord shall have a speciall Writ of *Travers*, and not *vi and armis*, because the entry was lawfull, *s. et 9. Eliz. ibid.*

The Lord *Dacres* enters upon his Cop-

Coppy-holder, and leaseth it to a stranger for yeares ; the Lessee enters, and was ejected by the *Coppy-holder*, and hee brings a Writ of *Electiōe firme* : The *Coppy-holder* pleads that the Lands are demisable *per Custome* ; and so they were at issue ; and hee shewed in evidence a *Coppy* made 13. *Henry* the eighth, by which a Tenant had surrendered the Lands, to have and to hold, &c. whose estate hee had, and by another Tenant rendering the yearly Rents, Customes, and Services, and also hee produced certaine Witnesses who proved the Land to bee *Coppie* by the space of 69. yeares. The plaintiffe, to destroy the Title of that evidence, shewed certaine Rentals that they were Free Lands, &c. 9. et 10. *Henry* 7. and not *Coppy* ; and also another Rentall to that intent, in 12. *Henry* 6. which proved that those Lands were leasee for twenty yeares: *Per Cur.* this evidence doth not disprove the *Coppy-hold*, for it was not within the time of memory ; but if hee had shewed the *Indenture* of *Leasse* made within 30. yeares or 80. yeares, so that a man might remember it, then it had beene good, although the Statute of limitation extends not unto it, by the Justices, such evidence

as proves it to be within time of memory, is good.

Also by them, if those Lands bee in the hands of the Lord by forfeiture, Escheat, or Surrender, yet the Custome remaineth; for he may demise them againe, and the Custome shall bee revived; but by some men, if by Escheat it bee in the Lords hands, the Custome is extinct. 8. et 9. Eliz. *ibidem*.

The Lord cannot increase a fine which is certaine.

Addington Lord of *Harlow* in *Essex*, would encrease the Fines of his Coppy-hold Tenants, which were proved to bee certaine: And it was holden that hee could not increase them, and it shall be a good prescription to say, alwaies ready to pay such a summe and no more. 18. 19. Eliz.

4. Eliz. It was mooved by *Manwood* Sergeant, if a Coppy-holder in Fee in right of his Wife doe Surrender, the wife being not examined by the Steward, but by some of the Tenants, the Custome permitting it, the Husband dyes: Whether the Wife shall sue by plaint in Nature of a *Cui in vita*, or may enter? And by him shee may enter, because it is no discontinuance, for that it is a surrender

surrender to the Lord who hath the reversion, for if a Tenant in Tayle enfeoffe him in the reversion; it is no discontinuance; but if she had been examined, she should have bin barred for ever.

And *Dier*, if a Coppy-holder in Tayle surrender to the Lord to the use of a stranger, the Issue may bring a plaint in Nature of a Formdone in discender, and purge the discontinuance, for it is within the statute *De donis Conditionalibus*, *Lit Fo. 16. Com 233. 15 Hen. 8 Br. tit. Tenant per Copie 24.*

And by *Manwood*, no negative prescription may prevaile against a statute: And the Common Law is no other but an ancient usage throughout all the Realme; and a prime Custome may encounter with it, but not with a statute.

And by *Dier*, if after the Surrender the Lord admit the Wife againe, yet shee shall be in by her Husband in construction of the Law.

Coppy-hold of Inheritance discends unto two sisters by two venters, none of them making entry, and before the Court and admission

million one of them dyes, her heire shall have the moyty, and not the other sister, by *Dier* chiefe Justice in the Chancery.

Also if a Coppy-holder in Taile-Surrender to another in Fee, who is admitted, this is a discontinuance; and so the Husband of his Wifes Coppy-hold: And he said, that a remitter shall be of a *Coppy-hold*, as it shall be of a Freehold and inheritance at the common Law. 13. et 14. *Eliz.*

In the *Duch.* it was in question, whether a Coppy-hold may be entayled or not? And by *Wray* chiefe Justice, and *Manwood* chiefe Baron; the Tayle was not Fee simple at the Common Law, if it did not appeare by the Custome, and that may bee proved by the Court Roles, or by some other prooffe that there is a recovery by plaint of Formedon, or the Lands had descended according to Land in Tayle, as *possessio fratris* shall not be of it, or that that the Daughter shall not inherit, before the sonne which is uncle to the same. *Egerton* was of counsell with this case, which was betweene *Sherington* and an other. 22. *Eliz.*

Hanchet and *Rosse* concerning land of *Dicot* in *Stepping Hackney*, a Coppy-holder of inheritance

inheritance dies, the Lord grants the wardship of the Land, during the minority of the heire, to the Wife being sole; shee takes a Husband and dyes: It was demanded whether the Husband should have it or not? And it seemed not, but if it had beene a thing in which he had intrest to his owne use, that he should have it, as a Lease for yeares, the executor shall have it without admittance of the Lord, so the Husband shall have a Lease for yeares made to his Wife, without admision.

By all the Justices. 17. *Eliz.* If a Coppyholder in Fee take an estate in Tayle by Charter-hold, or take a Lease for yeares by Indenture, his Coppy-hold is confounded.

7. et 8. *Eliz.* by *Harpour* and others; a Lessee for yeares of a Mannour may make Coppies, (if the Custome be so) to a man and his heires *secundum consuetudinem, &c.* for if the Coppy-holder in Fee dye, his heire is in by descent, and ought to be admitted, or els he shall compell the Lord to admit him, for for it is of necessity. But Coppies for life or yeeres it is otherwise, for by the death of the Tenant, there is not any that can compell the

N

Lord

Lord to make him a new Copy if he will not; but hee may retaine the Land in his owne hands, and therefore the grants of such Coppies as are expired, made by a lessee for yeares, are void.



26. ELIZ.

First, Land Demiseable, by Copy in the time of *Richard the second*, is perfect Copy-hold; so if it bee demised by Copy 15. or 16 yeares.

Secondly, If the Lord purchase the Coppihold of his Tenant money, this is clearly a Surrender, and an extinguishment of the Copy, and it is not demiseable by Copy after: But if the Lord enter for forfeiture without presentment found, that is demiseable by Copy againe.

Thirdly, If the Lord bring Trespas against a Copy-holder, who pleads that it is Freehold.

hold, this is a Forfeiture, and the Lord may enter.

Fourthly, the Lord cannot seise, because his *Coppy-holder* was sworne to give evidence against him, for this is no forfeiture.

Fifthly, if a *Coppy-holder* disseise his Lord of other Land, that is not a forfeiture of the *Coppy-hold*.

Sixtly, if a *Coppy-holder* dye without heire, and the Lord enter by escheat, this is demiseable by *Coppy* againe; but if the Lord afterwards doe make a feoffment, or suffer a recovery, and after doe repurchase it, it is not demiseable; but if the *Lord* reverse the Judgement upon recovery by error, attaint, or deceit, and hath restitution, then it is demiseable by *Coppy* againe.

A disseisin doth not extinguish the Custom, nor acts done by the disseisor.

Seventhly, if a *Coppy-holder* suffer a recovery by prescript at common Law by collusion, or make a Feoffment, or bargain and sale, and the Lord enters and makes a lease for yeares thereof, the Land is not demiseable by *Coppy* againe.

Eighthly, if a Coppy-holder surrender his Land, to the intent that a stranger shall have the Rent out of it by Coppy; it is no good Coppy-hold Rent.

Ninthly, if there bee two joyn-tenants in Common of a Mannour; and a Coppy-holder surrenders to the use of one, this is not Coppy-hold Land.

Tenthly, if the Husband and Wife bee joyn-coppy-holders of the purchase of the husband during Coverture, and the Husband is attainted of Felony and dyeth, this is not a Forfeiture of any part of the Coppy-hold; but if the purchase was made before the coverture, then it is a Forfeiture of the moyty.

Eleventh, If two Coppy-holders exchange by licence, and after the part of the one is recovered by an elder title, he may enter in the Land which the other hath in exchange.

Twelvth, If two Copenceners Coppy-holders make partition, and the one is impleaded, and doth loose by just title, and the recoverer enters into the Land, shee cannot enter upon her sister, because she did not.

not pray in aide for the rate. A feme Convert Joynt Coppy-holder with another in Fee, may surrender her moyty to the use of her Husbaud and it is good.

Thirteenth, the Kings Steward without ny patent of his Office seiseth divers Coppy-holds, and afterwards the Lord Treasurer and those of the *Exchequer* doe lease the same Land for yeares ; and thereupon it was moved, whether Coppies made by the Steward without patent were good? and the Lord *Dier* thought they were good *Coppies*; but in the *Exchequer* the Barons were of another opinion.

Fourteenth. a man seised of a Mannour, to which Coppy-holders for yeares and others are belonging, hee deviseth by testament the same Mannour to a ceraine person for payment of his debts, during which time divers Coppies expire, and the devisees grant new Coppies, and afterwards during the terme, the devisees grant in reversion, and a particular Tenant surrenders in *Court* to the use of the grantee, and after the wife of the devisor recovers in Dower part of the Mannour, and hath execution of those *Coppy-holds* assigned by the Sheriffe for her Dower: And it was moved, whether the Wife shall

avoid those Coppies made by the devisees:
 And *Browne* Justice was of opinion that no;
 to which *Wylton* agreed, for they said, that
 those are ordinary things, and which must bee
 done of necessity by force of the Custome,
 and not any deede or new charge created by
 the devisees, who are but officers to execute
 the Custome which of necessity must bee
 done, for they cannot bee made by any
 others who have the possession of the
 Mannour; for it hath beene adjudged,
 that such Coppies and ordinary things, as
 presentment to a Church made by a disseisor,
 or by a Lessee for Life or Yeares shall stand
 good, and shall not bee avoided by reason
 of the necessity: but other charges created
 by the Heire after the death of the Huband,
 as a Lease for yeares Rent charge in which
 there is no such necessity, the Tenant in
 dowre shall discharge them, and although
 the Wife shall bee adjudged in by her
 husband, yet shee shall not have those things
 which chance before assignment of her dower.
 If a wardship fall, or an avoidance of a
 Church, or a villaine regardant hath pur-
 chased, and the heire enters, or presents, these
 things the heire shall have, and not the Te-
 nant in Dowre, and it may be that the wife
 will never sue for her dower, or peradven-
 ture

ture she shall have other Mannours assigned her for the same. And as to the reason, that it is not a thing of necessity to grant Coppies in reversion, yet they were of opinion that because the *Custom* doth allow it, it is *Customary*, and therefore it may bee put in execution: for the *Custom* is annexed unto the Land, and not unto the interest of the Lord. But *Wray* said, that of estates that are to *Coppyholders* and their heires according to the Custom of the Mannour, if such a Coppy-holder dye without heire, the Custom is determined. If such a Lessor for life or yeares of the same Mannour grant new Coppies, they are not good, and so there is a diversity.

A man cannot devise that his friends shall make Coppies or hold Courts, for none shall make Coppye: but he that is Lord of the Mannour, and hath an interest.

The Lord of the Mannour shall have the government of the Coppy-hold during the infancy of his Tenant: Executors shall have a Lease for yeares of Coppy-hold Land without any new admittance.

The Husband of a Wife that is Coppy-holder for yeares, shall not bee newly admitted after the death of the Wife, nor bee tenant by the courtesie.

Where

Where inheritance of a *Coppy-hold* descends, the heire may enter without admittance; but it was a doubt whether he should have an action of Traverse against a stranger before admittance; for before admittance he is not properly Tenant; if such an heire will not come to the next Court, the Lord may make proces against him.

A *Coppy-holder* shall have Traverse against his Lord, paying his Services and customes.

If erroneous judgement be given against a *Coppy-holder* in the Lords Court, the Lord in his Court may reverse it, for it is not amendable in any other place or Court.

If the Lessee of a *Coppy-hold* commit waste and the Lord seiseth for forfeiture; the *Coppy-holder* shall not have an action of waste against his Lessee, as if Tenant for life make a Lease for yeares, which Lessee maketh waste, and the Lessor recovers, the Tenant for Life shall not have an action of the Case, but is without remedy; for it was his folly that hee would not have a Collatterall covenant of the Lessee that he should doe no waste.

A *Coppy-hold* is not forfeit for heresie, by the last of 2. Hen. 5.

A *Coppy-holder* is not Ter-tenant, but is Tenant at the Lords will; and a *Coppi-hold* is not bound by the statute of Wills nor of Fines,

Fines, nor of Limitations

A *Coppy-hold* shall not be extended by a statute, Marchant or Staple.

The Husband and Wife being seised of a Mannour to them and the heires of the Husband ; hee grants a Rent charge out of it, and dyes, the *Coppy-holder* surrenders, the Wife makes another *Coppy* and dyes, the grantee shall distraine upon the *Coppy-hold*.

If the Lord of a Mannour hath a great waste, and grants a rent charge out of the same, and the *Coppy-holders* have *Common* in the waste, and they put in their *Cassell*, the grantee shall distraine them, if they cannot make prescription.

If a *Coppy-holder* surrender to the use of another and the Lord will not admit him, nor make a grant unto him, the surrender is void.

If there be two Joynt *Coppy-holders*, and the one commits a forfeiture, he shall forfeit but the Moyty.

Lessee for yeares of a *Coppy-hold* shall have an *eiectione firme* ; by *Plowden* and others.

If there be a Lease for yeares of a Mannour, and one *Coppy-holder* purchase the reversion in fee, this is a destruction of the *Coppy-hold*, and the Lessee of the Mannour may put him out, and occupy during his terme. s. *Elix.* adjudged.

A *Coppy-holder* purchaseth the Mannour to him and another in fee, the companion may occupy the *Coppy-hold* joyntly presently
14. *Elix.*

Nota, it was agreed in the common Bench. 21. *Eliz.* that the Bayliffe of a hundred or of a base Court, may take goods upon *levari facias*, to give execution to the plaintife, as well as the Sheriffe; yet they agreed that divers Bookes are against it. 4. *Hen.* 6. 22.

Two Joint Copy-holders in Fee make a partition, that is good, and no forfeiture, nor alienation. 12. *Eliz.* agreed in duchie chamber.

If a Copy-holder surrender, and then the Lord doth acknowledge a statute marchant, and after the Lord grants it by Copy, the Copy-hold is liable, for at the time of the knowledgment it was annexed to the free hold; but if a *Copy-holder* acknowledge a statute, that is not liable.

If a man enter with force upon a *Copyholder*, he shall not have forceable entrey, nor indictment, but the Lord shall have it, and upon restitution to the Lord the *Copy-holder* shall enter.

The Lord grants to a *Copy-holder* his trees growing, or that shall be growing upon the Land, he may fell trees now growing, and no forfeiture, by reason of the dispensation, but he cannot cut the trees which shall grow in time to come.

If the disseisor of a Mannour make *Coppies* for life, and the disseisee enter, he shall defeat them, but of *Copy-holds* in fee before disseisin, and a new grant of them upon Surrender in time of disseisin, it is otherwise *per Plowden*.

Popham in Case Ramsey vers. Arthurs. 291 *Eliz.*

Eliz. A *Coppy-holder* may prescribe to have common in the Lords Land.

If a *Coppy-holder* surrender to the use of another, and the Lord grant it to *cestuy que use*, making no mention of the surrender, yet it is good, *per Plowden* in *Batlands* case.

If there be a Mannour consisting of demesnes, Free hold and *Customary Tenements*; if the Lord grant certaine of the *Coppy-holds* in Fee, the grantee may keepe *Court*, and do homage, and the *Coppy-holders* by their othes may make presentments of their Customes, or of the death of any Tenant, and the grantee may make in *Court* a new estate by *Coppy*, as if it should be a perfect Mannour; *mes* the stile shall not be, *Curia Manerij*, but *Curia halimoti*; *id est*, *Convocatio tenentium*, for when they are assembled, they may enforme the Lord of their Customes and duties. It was otherwise adjudged in the *Com bench.* 29 *Eliz.* between *Dodington* and *Chaffin* for parcell of the Mannour of *M.*

It was adjudged in the common Bench 29. *Eliz.* that where Sir *Peter Carew* bein solely seised of the Mannour of *M.* in the County of *Devonshire* for Life; granted a *Coppie* in reversion according to the Custome of the Mannour, and dyed before the pratical Coppy-holder, this is a good Coppy in reversion against the Lord, in whose hands soever the *Signory* should come.

Errata.

Fol. 4. line 8. for preferred, read preferred, l. 14. for and read Ayde: & in the beginning of the l. for as read and. Fol. 6. l. 23. for compelled read expell. d. l. 14. for transgression re. trespass, f. 7. l. 17. for *Brook* re. *Brooke* f. 8 l. 6. re. shall be accounted as able to be, l. 16. for Coppyholders re. Coppyhold, l. 19. for divisible re. demisable, l. 27. for Tenements re. Tenants, f. 9. l. 2. for Tenements re. Tenants, l. 23. leave our (it) f. 14. l. 19. for offer re. affect, f. 17. l. 9. re. a particular right, f. 18. l. 9. for M. 1. re. *Westm.* f. 10. l. 9. for *cynsadi* re. *talem*, last li. for *clausa* re. *causa*, f. 31. l. 4. for accident re. incident, f. 23. l. 4. for commonly is lands, re. commonly is in lands, l. 23. for custome *Harry* or 3, re. custome of *Harry*, l. 24. for of common *Estovers* re. common of *Estovers*, f. 25. l. 4. for deceased, re. disseised, l. 13. for is uncertaine, re. is so uncertaine, f. 28. l. 7. for both to discusse, re. both be to discusse, f. 29. l. 3. for transgresse, re. trespass in divers places, l. 23. for or services, re. doing services, l. 25. for prescribe, re. to prescribe.

